



David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

May 27, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Submitted via email to regs.comments@federalreserve.gov

Re: Docket No. R-1286; Clarification/Amendments to Regulation Z

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on proposed clarification/amendments to the rules of Regulation Z. The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to formulating informational and educational outreach programs and initiating policy development. Currently, the CPB is presenting comprehensive outreach programs on issues such as identify theft, Internet safety, financial literacy, and credit card management. Our Consumer Assistance Unit (CAU), which takes complaints five days a week, 8:30 a.m. to 4:30 p.m., via our toll-free helpline at 1-800-697-1220 and twenty-four hours a day, seven days a week via the web at www.nysconsumer.gov, responds to and resolves over 20,000 complaints and inquiries a year on a variety of topics including banking fees, credit card billing disputes, identity theft, and product refunds and returns.

In the past year, the Agency received more than 678 credit-card related complaints and inquiries. The nature of these complaints involved billing disputes and erroneous charges, exorbitant fees, changes in interest rates, and late payment fees.

We commend the Federal Reserve Board (FRB) for its issuance of a final rule amending Regulation Z's provisions in January. The CPB filed comments in that process. The amendments/clarifications currently proposed today are, for the most part, positive for consumers. We set forth our specific comments below.



Disclosure of 0% Interest

In this proposal, the FRB seeks to clarify that a credit card issuer offering a deferred or waived interest plan may not disclose a rate as 0%, "given the contingent nature of deferred or waived interest programs." (74 FR 20784 (May 5, 2009).)

The CPB supports this amendment. The term "0% interest," where interest is in fact accruing, can be misleading to consumers who may incorrectly believe that under *no* circumstance will interest accrue. Therefore, the term should be reserved for situations in which no interest will be charged, under any circumstances.

Disclosure of APRs

Currently, Section 226.6(b)(2)(i)(E) requires creditors, where an open ended account is opened at point of sale, to provide in the account opening table either (1) the specific APR applicable, or (2) a range of APRs, if the disclosure that the APR varies by state. The FRB proposes amending the section to allow creditors to disclose a range of APRs where the APR depends on the consumer's creditworthiness. In such case, the creditor must refer the consumer to the account agreement or other disclosure provided together with the account opening table.

The proposal, to the extent that it allows a creditor to provide a range of APRs if it determines the APR based on creditworthiness, is a distinct step backwards. Consumers should know exactly what they are agreeing to when they open an account. They cannot know with certainty where the creditor, for example, tells them that the APR could be anything from 7-25%. While the FRB proposes to require the actual APR to be disclosed elsewhere in the materials provided to the consumer at account opening, this is insufficient. The FRB has repeatedly found in its own testing that "consumers tend not to read disclosures in small print and dense prose, but generally are familiar with the table on applications and solicitations."¹ For such an important term as the APR, the disclosure must be meaningful and be included in the table.

Periodic Statement Clarifications

The FRB proposes several revisions to comment 7(b)-1, relating to periodic statement disclosures throughout the life of deferred or waived interest promotions. The FRB

¹ Testimony, Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, March 19, 2009, Before the Subcommittee on Financial Institutions and Consumer Credit, Committee of Financial Services, U.S. House of Representatives, Washington, D.C., *found at* <http://www.federalreserve.gov/newsevents/testimony/braunstein30090319a.htm> (last visited 05/06/2009)



suggests that creditors offering these programs must disclose the amount of the deferred/waived interest balance on which interest *may* be imposed, so that consumers are cognizant of this figure. Creditors must also disclose the amount of accruing interest balances for such programs. In addition, the FRB proposes to add Section 226.7(b)(14) to require creditors to include on a consumer's periodic billing statement a warning notice for the two billing cycles prior to the date in which the balance must be paid in full so as to avoid the imposition of interest charges. The notice must be on the front of the periodic statement and list the date on which the payment is due.

These proposals are sound. The disclosures of the accruing interest and the deadline to pay off the subject balance will remind consumers that the promotion period is ending shortly. It will also state, in concrete terms, the consequences for failing to pay off the balance in full.

Exception to the 45-Day Notice Requirement

The FRB proposes to amend comment 9(c)(2)(i)-3 to clarify the situations in which the 45-notice requirement can be waived by the consumer. The proposed comment clarifies that a waiver of the notice requirement can only become effective via a specific agreement-- the notice period cannot be waived by a general reservation of rights to change terms set forth in the cardholder agreement, for example. The proposed comment further delineates the sole unique circumstances that would qualify under the exception. The FRB is wise to amend the comment to make the exception to the 45-day requirement as narrow as possible, lest the exception be abused by credit card issuers.

Advertisements

The FRB is proposing to require additional disclosures for advertisements that use terms such as "no interest," "no payments," "deferred interest," "same as cash" or other similar verbiage. Specifically, the advertisements must disclose the specific terms of the "no interest" offer, and such disclosure must be made clearly and conspicuously and in "immediate proximity" to the trigger term.



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The CPB commends these efforts to strengthen consumer protections from deceptive advertisements. By requiring all salient terms to be in immediate proximity to the appealing "no interest" term, the FRB is increasing the likelihood that the consumer will make an informed choice, and not be misled by fine print. However, the CPB would like to encourage the FRB to require the special deferred interest plan disclosure language on each document that includes the relevant triggering phrase. In this way, consumers will be more likely to understand the terms of the credit offer.

Thank you for your consideration of our comments.

Sincerely,



Mindy A. Bockstein
Chairperson and Executive Director

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